

S. 579. A bill to amend the Foreign Assistance Act of 1961 to target assistance to support the economic and political independence of the countries of the South Caucasus and Central Asia; to the Committee on Foreign Relations.

By Mr. FRIST (for himself, Mr. JEFFORDS, Mr. KENNEDY, Mr. NICKLES, Ms. COLLINS, Mr. BREAUX, Mr. INOUE, Mr. MACK, Mr. HAGEL, Mr. SANTORUM, Ms. MIKULSKI, and Mr. BINGAMAN):

S. 580. A bill to amend title IX of the Public Health Service Act to revise and extend the Agency for Healthcare Policy and Research; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SPECTER:

S. 581. A bill to protect the Paoli and Bradywine Battlefields in Pennsylvania, to authorize a Valley Forge Museum of the American Revolution at Valley Forge National Historical Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 582. A bill to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park; to the Committee on Energy and Natural Resources.

By Mr. CHAFEE (by request):

S. 583. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize programs for predisaster mitigation, to streamline the administration of disaster relief, to control the Federal costs of disaster assistance, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself and Mr. LAUTENBERG):

S. 584. A bill to amend title XIX of the Social Security Act to permit the Secretary of Health and Human Services to waive recoupment under the medicaid program of certain tobacco-related funds received by a State if a State uses a portion of such funds for tobacco use prevention and health care and early learning programs; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MACK (for himself, Mr. MOYNIHAN, Mr. LOTT, Mr. BROWNBACK, and Mr. WELLSTONE):

S. Res. 60. A resolution recognizing the plight of the Tibetan people on the fortieth anniversary of Tibet's attempt to restore its independence and calling for serious negotiations between China and the Dalai Lama to achieve a peaceful solution to the situation in Tibet; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BREAUX (for himself and Mr. MACK):

S. 572. A bill to prohibit the Secretary of the Treasury from issuing regulations dealing with hybrid transactions; to the Committee on Finance.

SUBPART F OF INTERNAL REVENUE CODE

Mr. BREAUX. Mr. President, today Mr. MACK and I are again introducing

legislation to place a permanent moratorium on the Department of the Treasury's authority to finalize any proposed regulations issued pursuant to Notice 98-35, dealing with the treatment of hybrid branch transactions under subpart F of the Internal Revenue Code. Our bill also prohibits Treasury from issuing new regulations relating to the tax treatment of hybrid transactions under subpart F and requires the Secretary to conduct a study of the tax treatment of hybrid transactions and to provide a written report to the Senate Committee on Finance and the House Committee on Ways and Means.

By way of background, the United States generally subjects U.S. citizens and corporations to current taxation on their worldwide income. Two important devices mitigate or eliminate double taxation of income earned from foreign sources. First, bilateral income tax treaties with many countries exempt American taxpayers from paying foreign taxes on certain types of income (e.g. interest) and impose reduced rates of tax on other types (e.g. dividends and royalties). Second, U.S. taxpayers receive a credit against U.S. taxes for foreign taxes paid on foreign source income. To reiterate, these devices have been part of our international tax rules for decades and are aimed at preventing U.S. businesses from being taxed twice on the same income. The policy of currently taxing U.S. citizens on their worldwide income is in direct contrast with the regimes employed by most of our foreign trading competitors. Generally they tax their citizens and domestic corporations only on the income earned within their borders (the so-called "water's edge" approach).

Foreign corporations generally are also not subject to U.S. tax on income earned outside the United States, even if the foreign corporation is controlled by a U.S. parent. Thus, U.S. tax on income earned by foreign subsidiaries of U.S. companies—that is, from foreign operations conducted through a controlled foreign corporation (CFC)—is generally deferred until dividends paid by the CFC are received by its U.S. parent. This policy is referred to as "tax deferral."

In 1961, President John F. Kennedy proposed eliminating tax deferral with respect to the earnings of U.S.-controlled foreign subsidiaries. The proposal provided that U.S. corporations would be currently taxable on their share of the earnings of CFCs, except in the case of investments in certain "less developed countries." The business community strongly opposed the proposal, arguing that in order for U.S. multinational companies to be able to compete effectively in global markets, their CFCs should be subject only to the same taxes to which their foreign competitors were subject.

In the Revenue Act of 1962, Congress rejected the President's proposal to completely eliminate tax deferral, recognizing that to do so would place U.S. companies operating in overseas markets at a significant disadvantage vis-a-vis their foreign competitors. Instead, Congress opted to adopt a policy regime designed to end deferral only with respect to income earned from so-called "tax haven" operations. This regime, known as "subpart F," generally is aimed at currently taxing foreign source income that is easily moveable from one taxing jurisdiction to another and that is subject to low rates of foreign tax.

Thus, the subpart F provisions of the Internal Revenue Code (found in sections 951-964) have always reflected a balancing of two competing policy objectives: capital export neutrality (i.e. neutrality of taxation as between domestic and foreign operations) and capital import neutrality (i.e. neutrality of taxation as between CFCs and their foreign competitors). While these competing principles continue to form the foundation of subpart F today, recent actions by the Department of the Treasury threaten to upset this longstanding balance.

On January 16, 1998, the Department of the Treasury announced in Notice 98-11 its intention to issue regulations to prevent the use of hybrid branches "to circumvent the purposes of subpart F." The hybrid branch arrangements identified in Notice 98-11 involved entities characterized for U.S. tax purposes as part of a controlled foreign corporation, but characterized for purposes of the tax law of the country in which the CFC was incorporated as a separate entity. The Notice indicated that the creation of such hybrid branches was facilitated by the entity classification rules contained in section 301.7701-I through -3 of the Income Tax Regulations (the "check the box" regulations).

Notice 98-11 acknowledged that U.S. international tax policy seeks to balance the objectives of capital export neutrality with the objective of allowing U.S. businesses to compete on a level playing field with foreign competitors. In the view of the Treasury and IRS, however, the hybrid transactions attacked in the Notice "upset that balance." Treasury indicated that the regulations to be issued generally would apply to hybrid branch arrangements entered into or substantially modified after January 16, 1998, and would provide that certain payments to and from foreign hybrid branches of CFCs would be treated as generating subpart F income to U.S. shareholders in situations in which subpart F would not otherwise apply to a hybrid branch as a separate entity. This represented a significant expansion of subpart F, by regulation rather than through legislation.